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**KARL MORELL**

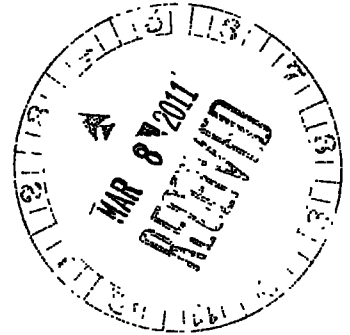
**kmorell@dc.bjllp.com**

228965

**March 8, 2011**

**BY HAND DELIVERY**

**Ms. Cynthia T. Brown  
Chief, Section of Administration  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20423-0001**



**Re: STB Finance Docket No. 35456, Austin Western Railroad, L.L.C. –  
Lease and Operation Exemption – Capital Metropolitan  
Transportation Authority**

**Dear Ms Brown:**

**Attached for filing are the original and ten copies of a Verified Notice of Exemption under 49 C.F.R. § 1150.41 and a check covering the \$1,800 filing fee. Also enclosed is a Disc containing the Notice and Summary.**

**Please time and date stamp the extra copy of the Notice of Exemption and return it with our messenger.**

**If you have any questions, please contact me.**

**ENTERED  
Office of Proceedings  
MAR - 8 2011  
Part of  
Public Record**

**Sincerely yours,**

*Karl Morell*

**Karl Morell**

**Enclosures**

**FILED**

**MAR 8 2011**

**SURFACE  
TRANSPORTATION BOARD**

**FILED**

**MAR 8 2011**

**SURFACE  
TRANSPORTATION BOARD**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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STB FINANCE DOCKET NO. 35456

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AUSTIN WESTERN RAILROAD, L.L.C.  
--LEASE AND OPERATION EXEMPTION--  
CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

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VERIFIED NOTICE OF EXEMPTION  
Pursuant to 49 C.F.R. § 1150.41, Et Seq.

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KARL MORELL  
Of Counsel  
BALL JANIK LLP  
Suite 225  
1455 F Street, N.W.  
Washington, D.C. 20005  
(202) 638-3307

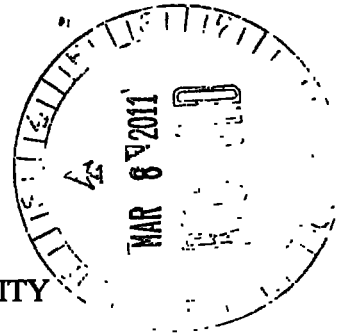
Attorney for:  
AUSTIN WESTERN RAILROAD, L.L.C.

Dated: March 8, 2011

BEFORE THE  
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35456

AUSTIN WESTERN RAILROAD, L.L.C.  
--LEASE AND OPERATION EXEMPTION--  
CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY



VERIFIED NOTICE OF EXEMPTION  
Pursuant to 49 C.F.R. § 1150.41, Et Seq.

Austin Western Railroad, L.L.C. ("AWRR")<sup>1</sup>, a Class III rail carrier, files this Verified Notice of Exemption pursuant to 49 C.F.R. Part 1150, Subpart E--Exempt Transactions Under 49 U.S.C. 10902, to permit AWRR to lease and operate over approximately 165.93 miles of rail lines owned by the Capital Metropolitan Transportation Authority ("CMTA") in Texas. AWRR has been the freight operator over the rail lines being leased since 2007. See STB Finance Docket No. 35072, *Austin Western Railroad, Inc. – Operation Exemption – Capital Metropolitan Transportation Authority* (not printed), served September 14, 2007 ("*AWRR Operation Exemption*").<sup>2</sup>

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<sup>1</sup> AWRR was converted to a limited liability company as part of the corporate reorganization authorized by the Surface Transportation Board ("Board") in STB Finance Docket No. 35439, *Watco Holdings, Inc., Watco Companies, Inc., and Watco Transportation Services, Inc. – Corporate Family Transaction Exemption* (not printed), served November 4, 2010.

<sup>2</sup> The Lease Agreement adds 1.13 miles (between Milepost -1.13 and Milepost 0.0 at or near Giddings, TX) to the operations authorized in *AWRR Operation Exemption*.

In support of this Notice of Exemption, AWRR submits the following information as required by 49 C.F.R. § 1150.43:

**(a) Full name and address of applicant:**

Austin Western Railroad, L.L.C.  
315 W. 3<sup>rd</sup> Street  
Pittsburg, Kansas 66762

**(b) Applicant's Representative:**

Karl Morell  
Of Counsel  
BALL JANIK LLP  
Suite 225  
1455 F Street, N.W.  
Washington, DC 20005  
(202) 638-3307

**(c) Statement of Agreement:**

AWRR and CMTA have entered into a Lease Agreement.

**(d) The operator of the property:**

AWRR will be the freight operator on the rail lines being leased to AWRR.

**(e) Summary of proposed transaction:**

**(1) The name and address of the company owning the subject property:**

Capital Metropolitan Transportation Authority  
2910 East Fifth Street  
Austin, Texas 78702

**(2) Proposed time schedule:**

The involved transaction is expected to be consummated on the effective date of this Notice of Exemption.

**(3) Mileposts of the subject property:**

The rail lines that AWRR will lease and operate are located: (1) between Milepost -1.13, at or near Giddings, TX, and Milepost 154.1, near Llano, TX; and (2) between Milepost 0.0, near Fairland, TX and Milepost 6.5, near Marble Falls, TX. AWRR will also lease and operate over the Scobee Spur (3.3 miles) and the Burnett Spur (0.93 miles). CMTA's acquisition of the lines was exempted in STB Finance Docket No. 33596, *Capital Metropolitan Transportation Authority – Acquisition Exemption – City of Austin, TX* (not printed), served May 27, 1998, and CMTA continues to have a residual common carrier obligation with respect to the lines.

**(4) Total route miles:**

The length of the rail lines which AWRR will lease and operate is approximately 165.93 miles, including the Scobee and Burnett Spurs.

**(f) Map:**

A map of the rail lines AWRR will lease and operate is attached as Exhibit A.

**(g)** AWRR hereby certifies that AWRR's projected revenues as a result of this transaction will not result in AWRR becoming a Class II or Class I rail carrier. AWRR further certifies that the projected annual revenue of AWRR will exceed \$5 million. Consequently, the requirements of 49 C.F.R. § 1150.42(e) apply to this transaction. Because AWRR has been the freight operator over the involved rail lines and because AWRR's operations will not change as a result of this transaction, AWRR is seeking a waiver of the requirements of Section 1150.42(e). Out of an abundance of caution, AWRR has complied with the requirements of Section 1150.42(e) and is today certifying its compliance with the Board.

**(h)** The Lease Agreement between AWRR and CMTA does not contain a provision that will limit interchange with a third-party connecting carrier.

A caption summary, as required by 49 C.F.R. § 1150.44, is attached.

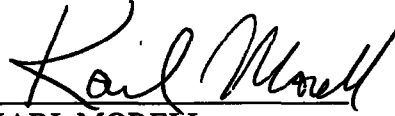
### **ENVIRONMENTAL AND HISTORIC IMPACTS**

AWRR will continue to be the rail freight operator over the CMTA rail lines. Further Board approval is required for AWRR to discontinue and CMTA to abandon any service and there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older. Hence, this Notice of Exemption does not require an historic report under 49 C.F.R. § 1105.8(b)(1).

AWRR's continued operation of the rail lines will not result in significant changes in carrier operations. There will not be a diversion of: (1) more than 1,000 rail carloads a year to motor carriage; or (2) an average of 50 carloads per mile per year for any part of this line to motor carriage. This transaction will not result in: (1) an increase in rail traffic of at least 100 percent or an increase of at least eight trains a day on any segment of the line; (2) an increase of rail yard activity of at least 100 percent; or (3) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day. AWRR's operation of the rail lines will not affect a Class I or nonattainment area under the Clean Air Act. In any event, the thresholds of 49 C.F.R. § 1105.7(e)(5)(ii) will not be exceeded. Finally, the transportation of ozone depleting materials is not contemplated. Therefore, no environmental documentation is required under 49 C.F.R. § 1105.6(c)(2).

This action will not significantly affect either the quality of the human environment or energy conservation.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Karl Morell", written over a horizontal line.

KARL MORELL

Of Counsel

BALL JANIK LLP

Suite 225

1455 F Street, N.W.

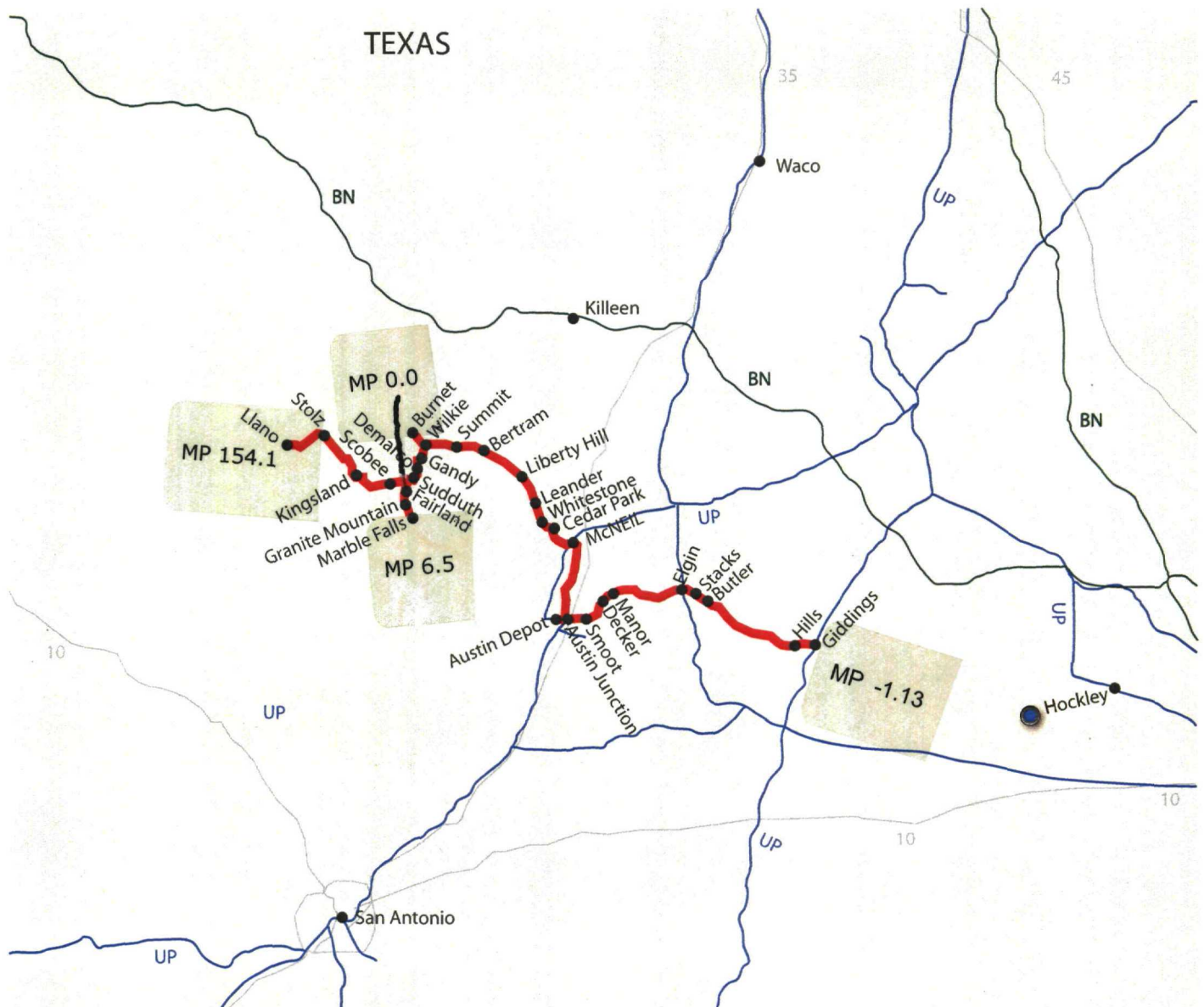
Washington, DC 20005

(202) 638-3307

Attorney for:

AUSTIN WESTERN RAILROAD, L.L.C.

Dated: March 8, 2011



**LEGEND:**

Austin Western RR (AWRR)

**Interchanges - Track miles 154**

UP - McNeil

BNSF - McNeil

● Mechanical Services

**EXHIBIT A**



**SURFACE TRANSPORTATION BOARD**

**NOTICE OF EXEMPTION**

**STB FINANCE DOCKET NO. 35456**

**AUSTIN WESTERN RAILROAD, L.L.C.  
--LEASE AND OPERATION EXEMPTION--  
CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY**

Austin Western Railroad, L.L.C. ("AWRR"), a Class III rail carrier, has filed a verified notice of exemption to lease and operate 165.93 miles of rail lines owned by Capital Metropolitan Transportation Authority (CMTA) in Texas. The rail lines that AWRR will lease and operate are located: (1) between Milepost -1.13, at or near Giddings, TX, and Milepost 154.1, near Llano, TX; and (2) between Milepost 0.0, near Fairland, TX and Milepost 6.5, near Marble Falls, TX. AWRR will also operate over the Scobee Spur (3.3 miles) and the Burnett Spur (0.93 miles).

Comments must be filed with the Board and served on Karl Morell, Of Counsel, BALL JANI LLP, Suite 225, 1455 F Street, N.W., Washington, DC 20005, (202) 638-3307.

This notice is filed under 49 C.F.R. 1150.41. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

**VERIFICATION**

**STATE OF KANSAS**

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ss.

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**COUNTY OF CRAWFORD**

I, Arthur E. McKechnie III, being duly sworn depose and state that I am Assistant Secretary of Austin Western Railroad, L.L.C., that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption and know the facts asserted therein are true and accurate as stated to the best of my knowledge, information, and belief.

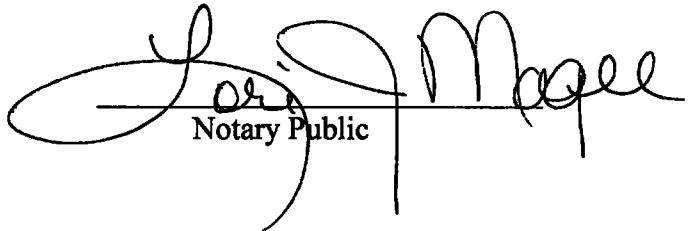


Arthur E. McKechnie III

SUBSCRIBED AND SWORN TO before me this 23<sup>rd</sup> day of February, 2011, in the County of Crawford, State of Kansas.

My Commission Expires:

8/16/2012

  
Notary Public

